



CITY COUNCIL AGENDA REPORT

MEETING DATE: OCTOBER 2, 2007

ITEM NUMBER:

SUBJECT: INTENT TO OVERRULE THE AIRPORT LAND USE COMMISSION'S INCONSISTENCY DETERMINATION FOR THE WYNDHAM BOUTIQUE HOTEL/HIGH-RISE RESIDENTIAL PROJECT (GP-06-03/SP-07-01/PA-06-75/VT-17172) AT 3350 AVENUE OF THE ARTS

DATE: SEPTEMBER 21, 2007

FROM: PLANNING DIVISION/DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: CLAIRE L. FLYNN, AICP, SENIOR PLANNER

FOR FURTHER INFORMATION CONTACT: CLAIRE FLYNN, (714) 754-5278

RECOMMENDATION

Adopt resolution for the City Council's intent to overrule the Orange County Airport Land Use Commission's Determination. (A fourth-fifths vote is required for the overrule action to carry.)

BACKGROUND

In July, 2007, the Federal Aviation Administration (FAA) issued a Determination of No Hazard to Air Navigation for the proposed Wyndham Boutique Hotel / High-Rise Residential project. In context with the other existing high-rise buildings in the South Coast Plaza Town Center area (i.e. Center Tower, Plaza Tower, DiTech/Comerica buildings), the FAA did not consider the project to be significant. The FAA determined that the project would have no greater effect upon the safe and efficient utilization of the navigable airspace and therefore would not be a hazard to air navigation.

On August 16 and September 20, 2007, the Airport Land Use Commission (ALUC) considered the proposed Wyndham Boutique Hotel / High-Rise Residential Project. The ALUC has the responsibility for adopting land use restrictions in the vicinity of operating airfields. The ALUC established land use restrictions for John Wayne Airport with the 2002 John Wayne Airport Environs Land Use Plan (AELUP). When a development project within the airport land use plan requires a General Plan and/or Specific Plan amendment, State law requires the ALUC to determine whether the proposed land use is consistent with its regulations and restrictions.

The ALUC staff report indicated that the Commission could consider a finding of consistency or inconsistency, but that there was a basis for a finding of consistency. The ALUC disagreed with the FAA No Hazard Determination. On a 5-3 vote, the ALUC found that the high-rise projects were inconsistent with the AELUP.

Although the FAA indicated that the proposed high-rise residential building was not a hazard to air navigation, the majority of the ALUC considered the building as a obstruction posing a potential hazard.

ANALYSIS

Project Location

The project site is located at 3350 Avenue of the Arts. The three-acre project site is bound to the west by Avenue of the Arts, Plaza Tower and a vacant parcel approved for development as the Orange County Museum of Art; to the north and northeast by The Lakes at South Coast apartment community; and to the south and southeast by The Lakes Pavilions retail center. The Marriott Hotel is to southeast of the project site. (Vicinity Map, Attachment 1).

Project Description

The proposed project involves reuse of the project site as a mixed-use development with both hotel and residential uses. The existing Wyndham Hotel would be renovated. Although there would be no change to the building square footage associated with the hotel, there would be a reduction in hotel rooms create a boutique hotel. To accommodate the proposed 23-story, 120-unit high-rise residential tower, the existing hotel parking structure would be demolished. (Architectural Renderings, Attachment 2).

A seven-level parking structure (480 parking spaces) would be constructed east of the new residential tower to serve the residential tower and the hotel. The Applicant may modify the overall mix of hotel rooms and residential units not to exceed an overall total of 320 hotel rooms/dwelling units.

The proposed Wyndham Boutique Hotel and High-Rise Residential project involves the following:

1. Certification of Final EIR No. 1054 which consists of a comprehensive analysis of the environmental impacts and any required mitigation measures for the proposed project pursuant to State Law.
2. General Plan Amendment GP-06-03 to amend the Land Use Element of the General Plan to incorporate provisions for high-rise residential development in the project area.
3. North Costa Mesa Specific Plan Amendment SP-07-01 to establish development standards and other related provisions in the NCMSP for the project.
4. Final Master Plan PA-06-75 for major renovation of the existing Wyndham Hotel site including: a reduction in hotel rooms from 238 to 200 rooms; construction of a 23-story high-rise residential building with 120 for-sale condominium units, a lounge/bar, and ancillary retail uses; and demolition of existing parking structure and construction of a new seven-level, 480-space parking structure. This includes a minor modification for encroachment of balconies.
5. Vesting Tentative Tract Map No. 17172 for the subdivision of the property for condominium purposes.

ALUC Override Process

Pursuant to State law, the City is required to initiate the ALUC override process in order to consider approval of the proposed project. The override process requires 45-day advance notice to the Department of Transportation (Caltrans) Division of Aeronautics and Orange County ALUC of the City's intent to override the ALUC Determination.

NOTE: A four-fifths vote of the Council is require to override the ALUC, and this action must occur prior to any action on the proposed projects.

Justifications for Intent to Overrule

Staff recommends that Council initiate the intent to overrule the ALUC Determination for the following reasons:

- State law indicates that the ALUC serves only as an "advisory body" to the City Council. Only the Costa Mesa City Council, and not the ALUC, has the authority to make land use decisions of this nature in the City of Costa Mesa. Other Cities including Irvine, Lake Forest, and Santa Ana have overruled the ALUC in recent years.
- The Federal Aviation Administration is the single Authority on air navigation safety and has issued official No Hazard Determinations for all proposed buildings at reduced heights. The Airport Environs Land Use Plan declares the FAA as the single "Authority" to determine project impacts on airport or aeronautical operations. The FAA has found that the proposed building at a height of 304' above mean sea level would not adversely affect air safety.
- The Wyndham project is not taller than Center Tower and is lower in height compared to the North Costa Mesa high-rises approved in January, 2007. The following table summarizes the height limits:

Table 1 HEIGHT LIMITS		
Project Site	Master Plan Building Height Limit	Specific Plan Height Limits
<u>PROPOSED PROJECT:</u> WYNDHAM BOUTIQUE HOTEL/ HIGH-RISE RESIDENTIAL PROJECT 3350 Avenue of the Arts	304' AMSL	280' AGL
APPROVED PROJECTS IN Segerstrom Town Center buildings (Site 1) 3400 and 3420 Bristol Street	308' AMSL 271'-275' AGL	315' AGL
Orange County Museum of Art (Site 2) 605 Town Center Drive	306' AMSL 275' AGL	315' AGL
The Californian at Town Center (Site 3) 580 Anton Boulevard	306' AMSL 271' AGL	280' AGL
Symphony Towers (Site 4) 585 Anton Boulevard	306' & 206' AMSL 272' & 172' AGL	306' AGL
Pacific Arts Plaza (Site 5) 675 Anton Boulevard	320' AMSL 287' AGL	315' AGL

Implications of the Intent to Overrule

Following are implications to the overrule of the ALUC Determination:

- *Council action regarding its intent to overrule the Airport Land Use Commission does not obligate Council to later take final action to overrule the ALUC or ultimately approve the project.* The Council's intent to overrule the ALUC will give Council the option to consider the project.
- *The City will retain its status as a consistent agency with the AELUP.* Overriding the ALUC decision does not affect the City's status as a consistent agency. The City will not lose its consistency status by completing the override process.
- *The City will not bear any liability for overruling the ALUC decision.* The override process will result in the airport operator's immunity from liability once a public agency overrides a determination of inconsistency. However, the City Attorney's office has completed a legal analysis of the City's liability and found that the City will not bear any liability from completing the overrule process.

LEGAL REVIEW

The City Attorney's office has approved the resolution as to form.

ALTERNATIVES

If Council wishes to consider the Wyndham project at its November 20, 2007 meeting, the only viable alternative would be to adopt the attached resolution related to the Council's intent to overrule the ALUC Determination (4/5ths vote required).

State Law requires a four-fifths vote to overrule the ALUC. All other discretionary approvals require Council majority. If this action does not carry, this would constitute a denial of the proposed project.

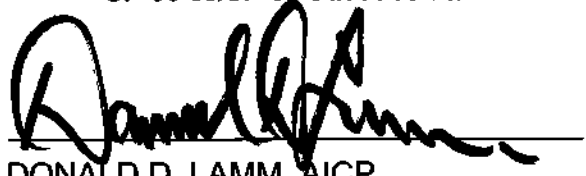
CONCLUSION

When Council accepted the General Plan screening requests for the Wyndham Boutique Hotel / High-Rise Residential project for processing, Council stressed the importance of the proposal to be within the development capacity of the General Plan, to feature ownership units, and to exhibit architectural design excellence showcasing the City's cultural arts center. The proposed project complies with these important objectives.

John Wayne Airport has not expressed any objection to the project and was previously supportive of the North Costa Mesa High-Rise projects. Additionally, the FAA has indicated that the proposed project would not present a hazard to air navigation safety or flight operations at John Wayne Airport. Overriding the ALUC will not result in any liability to the City nor will it affect the City's status as a consistent agency.



CLAIRE L. FLYNN, AICP
Senior Planner



DONALD D. LAMM, AICP
Deputy City Mgr./Dev. Svcs. Director

Attachments: 1. Vicinity Map
2. Architectural Renderings
3. Resolution

Distribution: City Manager
Asst. City Manager
City Attorney
City Clerk
Public Services Director
Staff (4)
File (2)

Howard Zelefsky
Vice President, Planning & Development
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RESOLUTION NO. 07- _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA RELATED TO THE INTENT TO OVERRULE THE ORANGE COUNTY AIRPORT LAND USE COMMISSION'S DETERMINATION THAT THE PROPOSED WYNDHAM BOUTIQUE HOTEL / HIGH-RISE RESIDENTIAL PROJECT (INCLUDING GENERAL PLAN AMENDMENT AND SPECIFIC PLAN AMENDMENT) ARE INCONSISTENT WITH THE 2002 JOHN WAYNE AIRPORT ENVIRONS LAND USE PLAN.

WHEREAS, the City Council of the City of Costa Mesa adopted the 2000 General Plan on January 22, 2002;

WHEREAS, the Planning Commission of the City of Costa Mesa adopted the North Costa Mesa Specific Plan by Resolution No. 94-67 in July 1994;

WHEREAS, by its very nature, the General Plan and North Costa Mesa Specific Plan need to be updated and refined to account for current and future community needs;

WHEREAS, the proposed Wyndham Boutique Hotel / High-Rise Residential project analyzed in Program EIR Number 1054 and proposed by Howard Zelefsky of Makar Properties involves the construction of an approximately 23-story/304' AMSL high-rise residential building at 3350 Avenue of the Arts, in conjunction with an interior renovation of the existing 6-story Wyndham Hotel;

WHEREAS, the proposed project involves the following discretionary approvals: (1) Certification of Final EIR No. 1054; (2) Override of the Airport Land Use Commission Determination; (3) General Plan Amendment GP-06-03 to amend the Land Use Element of the General Plan to incorporate provisions for high-rise residential development in the project area; (4) North Costa Mesa Specific Plan Amendment SP-07-01 to establish development standards and other related provisions in the NCMSPP for the project; (5) Final Master Plan PA-06-75 for major renovation of the existing Wyndham Hotel site including: a reduction in hotel rooms from 238 to 200 rooms; construction of a 23-story high-rise residential building with 120 for-sale condominium units, a lounge/bar, and ancillary retail uses; and demolition of existing parking structure and construction of a new seven-level, 480-space parking structure; and (5) Vesting Tentative Tract Map No. 17172 for the subdivision of the property for condominium purposes.

WHEREAS, the proposed Wyndham Boutique Hotel project include the following building height limit for the master plan and overall Specific Plan areas as shown in Table 1:

Table 1 HEIGHT LIMIT		
Project Site	Master Plan Building Height Limit	Specific Plan Height Limits
PROPOSED PROJECT: WYNDHAM BOUTIQUE HOTEL/ HIGH-RISE RESIDENTIAL PROJECT 3350 Avenue of the Arts	304' AMSL	280' AGL

WHEREAS, California Public Utilities Code Section 21676(b) requires the City of Costa Mesa to refer the proposed project to the Orange County Airport Land Use Commission (ALUC) for consistency with the Airport Environs Land Use Plan;

WHEREAS, at a duly-noticed public hearing on September 20, 2007, the ALUC found the proposed project to be inconsistent with the AELUP on a 5-3 vote;

WHEREAS, pursuant to Public Utilities Code Sections 21670 and 21676, the City of Costa Mesa may, after a public hearing, propose to overrule the ALUC by a four-fifths vote of the City Council, if the City of Costa Mesa makes specific findings that the proposed project is consistent with the purposes of Section 21670;

WHEREAS, at a duly-noticed public hearing on October 2, 2007, the Costa Mesa City Council took action to notify the ALUC of the City's intent to overrule the ALUC's Determination of Inconsistency for the proposed project;

NOW, THEREFORE, the Costa Mesa City Council **DOES HEREBY RESOLVE** to notify the Orange County Airport Land Use Commission of the City's intent to overrule the ALUC Determination that the proposed Wyndham Boutique Hotel / High-Rise Residential project (inclusive of a General Plan Amendment and North Costa Mesa Specific Plan Amendment) are inconsistent with the 2002 John Wayne Airport Environs Land Use Plan.

BE IT FURTHER RESOLVED that the City Council **DOES HEREBY ADOPT** the required findings in support of the City's intent to overrule of the ALUC Determination, as shown in Exhibit "A", FINDINGS.

BE IT FURTHER RESOLVED that the City Council directs staff to forward a letter to the Airport Land Use Commission and Caltrans Department of Transportation, Division of Aeronautics indicating the City of Costa Mesa's intent to override the ALUC's Determination of Inconsistency with the Airport Environs Land Use Plan. The letter shall include the proposed findings in support of the City's intended action.

PASSED AND ADOPTED by the City Council of the City of Costa Mesa at a public hearing held on the 2nd day of October, 2007.

ALLAN MANSOOR
MAYOR OF THE CITY OF COSTA MESA

ATTEST:

CITY CLERK OF THE CITY OF COSTA MESA

STATE OF CALIFORNIA))ss
COUNTY OF ORANGE)

I, JULIE FOLCIK, City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certify that the above Council Resolution No. 07-___ as considered at a regular meeting of said City Council held on the ___ day of _____, 2007, and thereafter passed and adopted as a whole at the regular meeting of said City Council held on the ___ day of _____, 2007, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this ____ day of _____, 2007.

EXHIBIT "A"

FINDINGS

The Costa Mesa City Council makes the following findings as stated in Section 21670 and required by Section 21676 of the Public Utilities Code as follows:

- A. Section 2.1.3 of the John Wayne Airport Environs Land Use Plan (AELUP) indicates that the Airport Land Use Commission recognizes the Federal Aviation Administration (FAA) as the single "Authority" for analyzing project impact on airport or aeronautical operations, or navigational-aid siting, including interference with navigational-aids or published flight paths and procedures. The AELUP also indicates that the Commission considers the FAA as the "Authority" for reporting results of such studies and project analyses. The FAA No Hazard Determinations dated July 23, 2007 is summarized in described in Table A and attached as Exhibit 1.

Table A	
FAA NO HAZARD DETERMINATION	
Project Site	Building Height Limit
Wyndham Boutique Hotel / High-Rise Residential project	304' AMSL 270' AGL
3350 Avenue of the Arts	

- B. It is in the public interest to (1) provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to (2) promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to (3) prevent the creation of new noise and safety problems.

(1) To provide for the orderly development of John Wayne Airport (JWA) and the area surrounding the airport, the ALUC adopted the 2002 Airport Environs Land Use Plan (AELUP) on December 19, 2002. AELUP Section 2.2.1 sets standards and criteria based on the continuing operation of John Wayne Airport as a commercial and general aviation airport. The AELUP standards guide development proposals to best provide for orderly development of the airport and the area surrounding the airport through implementation of the standards in Section 2.2.1 for CNEL CONTOURS, ACCIDENT POTENTIAL ZONES/RUNWAY PROTECTION ZONES AND BUILDING HEIGHT RESTRICTIONS.

The ALUC staff report prepared for the ALUC during its review of the proposed application on August 16 and September 20, 2007, indicated that there is a "basis for finding the proposed project [as conditionally consistent] with the JWA AELUP." The ALUC staff report indicated that ALUC staff has reviewed this project with respect to compliance with the JWA AELUP, including review of noise, height restrictions, imaginary surfaces, flight track information and environmental compliance. Based upon staff's review of the proposed project, including review of the FAA Determination of No Hazard and review of past Consistency actions by the

ALUC for projects in this area, there is a basis for finding the currently proposed project conditionally consistent with the Commission's JWA AELUP

C. The projects' compliance with Section 2.2.1 of the JWA AELUP is established as follows:

- *CNEL CONTOURS* – The proposed project is outside the AELUP's Noise Impact Zone No. 1 (65 dB CNEL) and No. 2 (60 dB CNEL) noise contours, however the City project approval requires that the applicant meet City noise standards, which are consistent with the sound attenuation level of 45 dB CNEL included in the AELUP Section 3.3.6.
- *ACCIDENT POTENTIAL ZONES/RUNWAY PROTECTION ZONES* – The proposed project is outside of John Wayne Airport (JWA) Runway Protection Zones as depicted in Appendix D of the AELUP; the ALUC has not adopted any Accident Potential Zones for this airport because none could be justified with the available data.
- *BUILDING HEIGHT RESTRICTIONS* – As evidenced by a Federal Aviation Administration (FAA) Determination of "No Hazard to Navigation" issued for the proposed project in July, 2007, the proposed project does not represent a hazard to air navigation at a maximum height of 304' AMSL at 3350 Avenue of the Arts.

D. Section 2.2.1 of the JWA AELUP also allows the ALUC to "consider utilization of criteria for protecting aircraft traffic patterns at the airport which may differ from those contained in FAR Part 77, should evidence of health, welfare, or air safety surface sufficient to justify such action." The ALUC "will utilize the results of an Aeronautical Study, conducted by the FAA pursuant to FAR Part 77.13, in order to determine if a structure will have an adverse effect on the airport or on aeronautical operations."

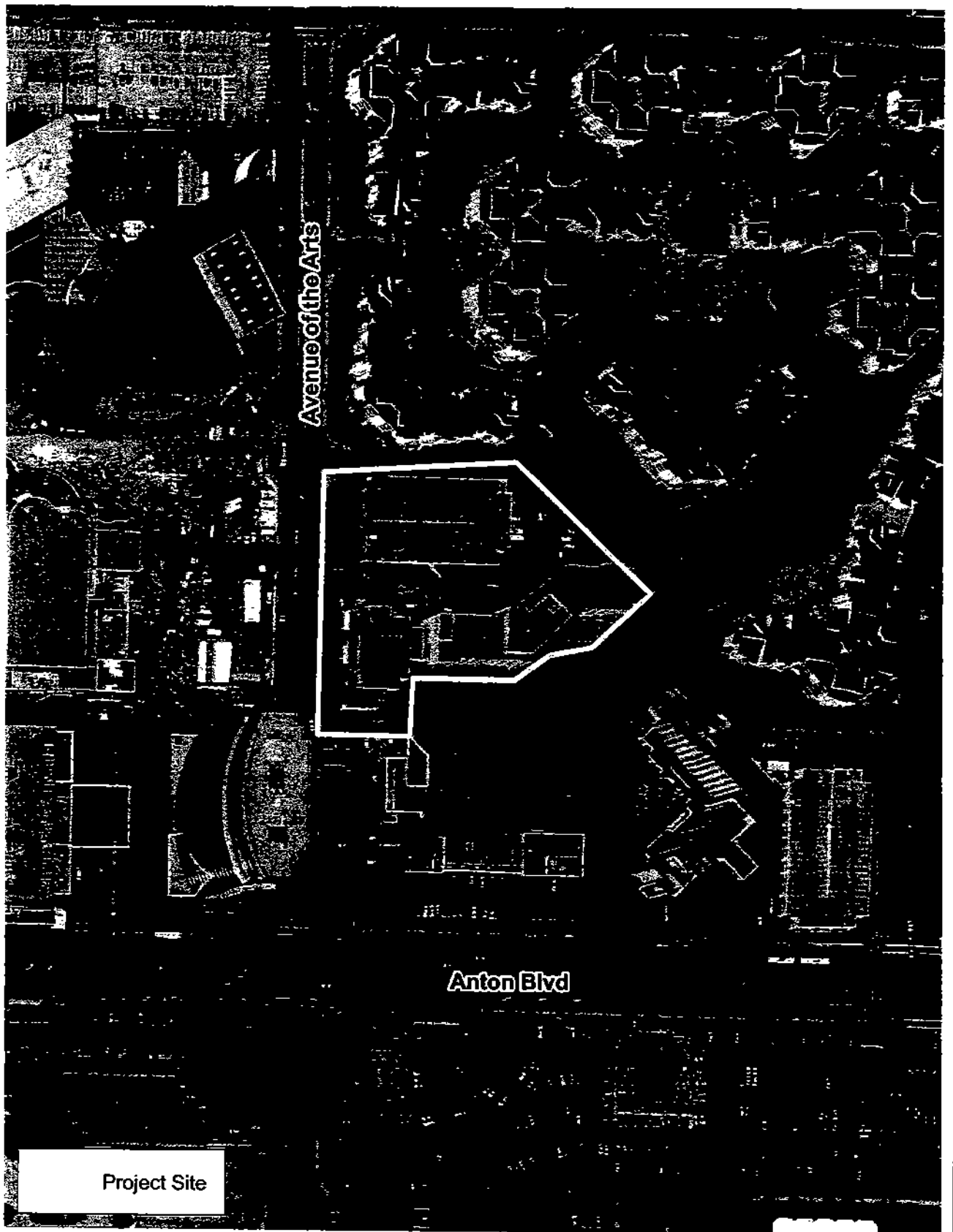
The Council acknowledges that the Commission may utilize criteria for protecting aircraft traffic patterns at individual airports which may differ from those contained in FAR Part 77, should evidence of health, welfare, or air safety surface sufficient to justify such an action. However, the Council considered the FAA No Hazard Determination that the proposed building would not present a hazard to air navigation. The City Council finds the ALUC's belief that the proposed projects would increase public exposure to safety hazards was not based on substantial evidence that was introduced, commented on, or identified in support of the incompatibility finding.

E. The City of Costa Mesa requires that all development proposals meet the City's noise standards of 45 dB CNEL for the interior of residential uses, which is consistent with the standards established to promote the overall goals and objectives of the California airport noise standards. A condition has been placed on the project to demonstrate compliance with the City's noise standards before the City will issue each building permit for the project. Through implementation of the City's noise standards, the project meets the AELUP standards for California airport noise standards.

F. The standards established in Section 2.2.1 of the AELUP were adopted to prevent the creation of new noise and safety problems. The proposed project complies with the standards established in Section 2.2.1 of the AELUP through compliance with the noise criteria for CNEL noise contours, and the proposed project is outside the 60 dB CNEL

noise contour and accident potential zones/runway protection zones. The FAA has completed its review of the proposed building which is penetrating the Part 77 horizontal imaginary surface by 98 feet. The FAA has determined the proposed building does not represent a hazard to air navigation.

- G. Section 2.2.1 of the AELUP also states that the ALUC has not adopted any Accident Potential Zones for this airport because none could be justified with the available data. By requiring project adherence to the established standards in the AELUP, the City has taken measures to assure risks to people and property on the ground, and to the occupants of aircraft, are held to a minimum.
- H. It is the purpose of Chapter 3.5 of the State Aeronautics Act to (1) protect public health, safety, and welfare by ensuring the orderly expansion of airports and the (2) adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.
- I. The Airport Environs Land Use Plan (AELUP) is based on the continuing operation of John Wayne Airport as a commercial and general aviation airport facility. The ALUC's authority to formulate land use plans is embodied in the John Wayne AELUP, which includes criteria in Section 2.2.1 to protect the public health, safety, and welfare by ensuring the orderly expansion of airports. The proposed project, including General Plan Amendment and North Costa Mesa Specific Plan Amendment, meet the criteria set forth in the AELUP Section 2.2.1 as the standards and criteria for development in the airport environs area. Thus, the proposed projects provide a development plan for property that will protect the public health, safety, and welfare and ensure the orderly expansion of the airport. Other existing buildings are present in the area which are taller than the proposed project (i.e. Center Tower at 320' AMSL and Plaza Tower at 319' AMSL). Thus, the criteria are met with these existing buildings and will continue to be met with the proposed building.
- J. The standards and criteria established in Section 2.2.1 of the AELUP are adopted by the ALUC to minimize the public's exposure to excessive noise and safety hazards. The proposed project is consistent with the standards and criteria established in Section 2.2.1 of the AELUP. By meeting the criteria in Section 2.2.1 of the AELUP including criteria for noise, runway protection zones and building height restrictions, the proposed development will minimize the public's exposure to excessive noise and safety hazards within areas around public airports through subjection of the projects to conditions identified by the ALUC. The conditions require sound attenuation of noise impacts to meet City and California airport minimum standards, obstruction lighting and marking consistent with the FAA Advisory Circular 70/7460-1, "Notice of Airport in vicinity" to future occupants, outdoor signage depicting the presence of operating aircraft in community areas of the project, and the requirement to obtain an encroachment permit for the construction activities.



Aerial Photograph of Project Site

Exhibit 2-2

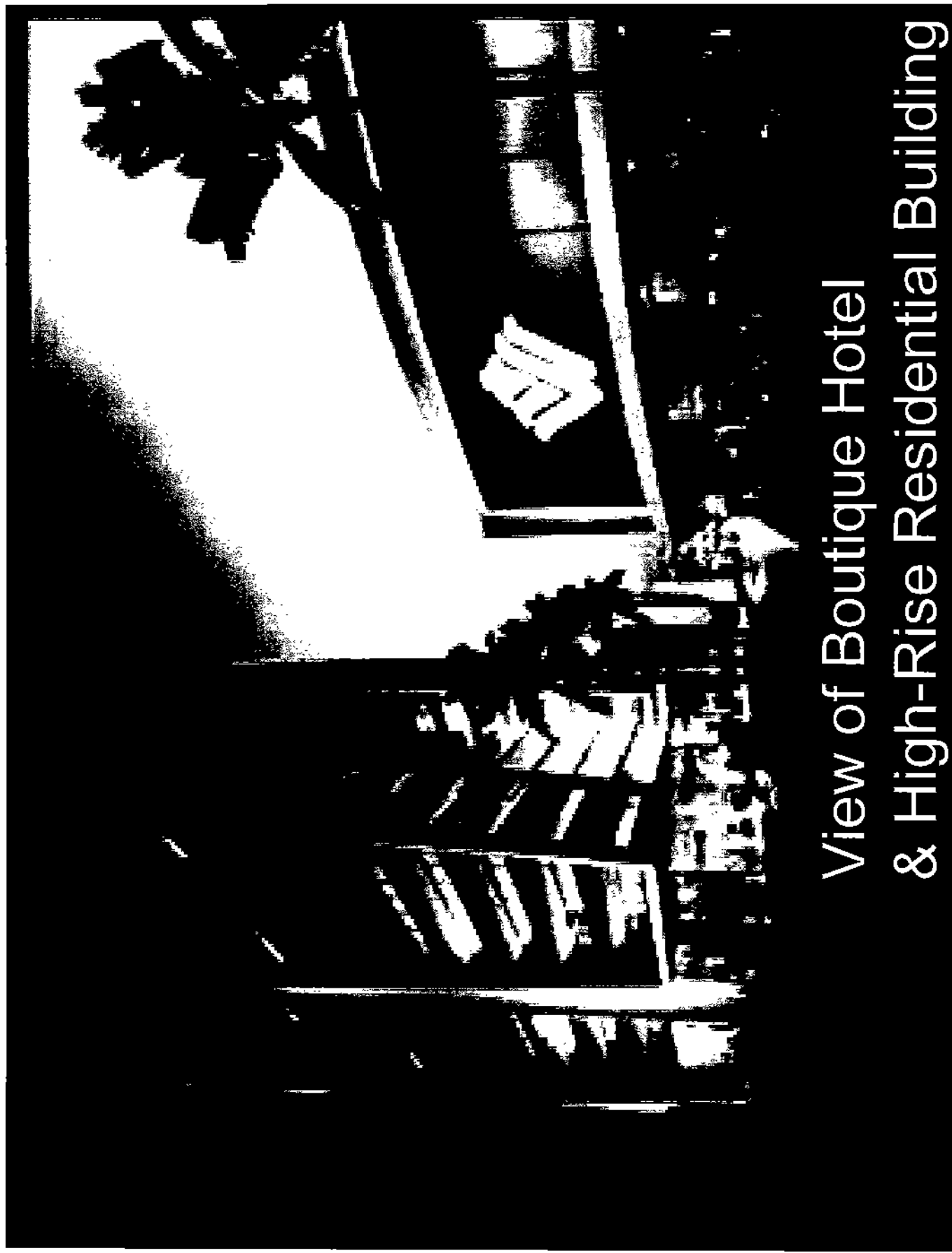
Wyndham Boutique Hotel/High-Rise Residential Project



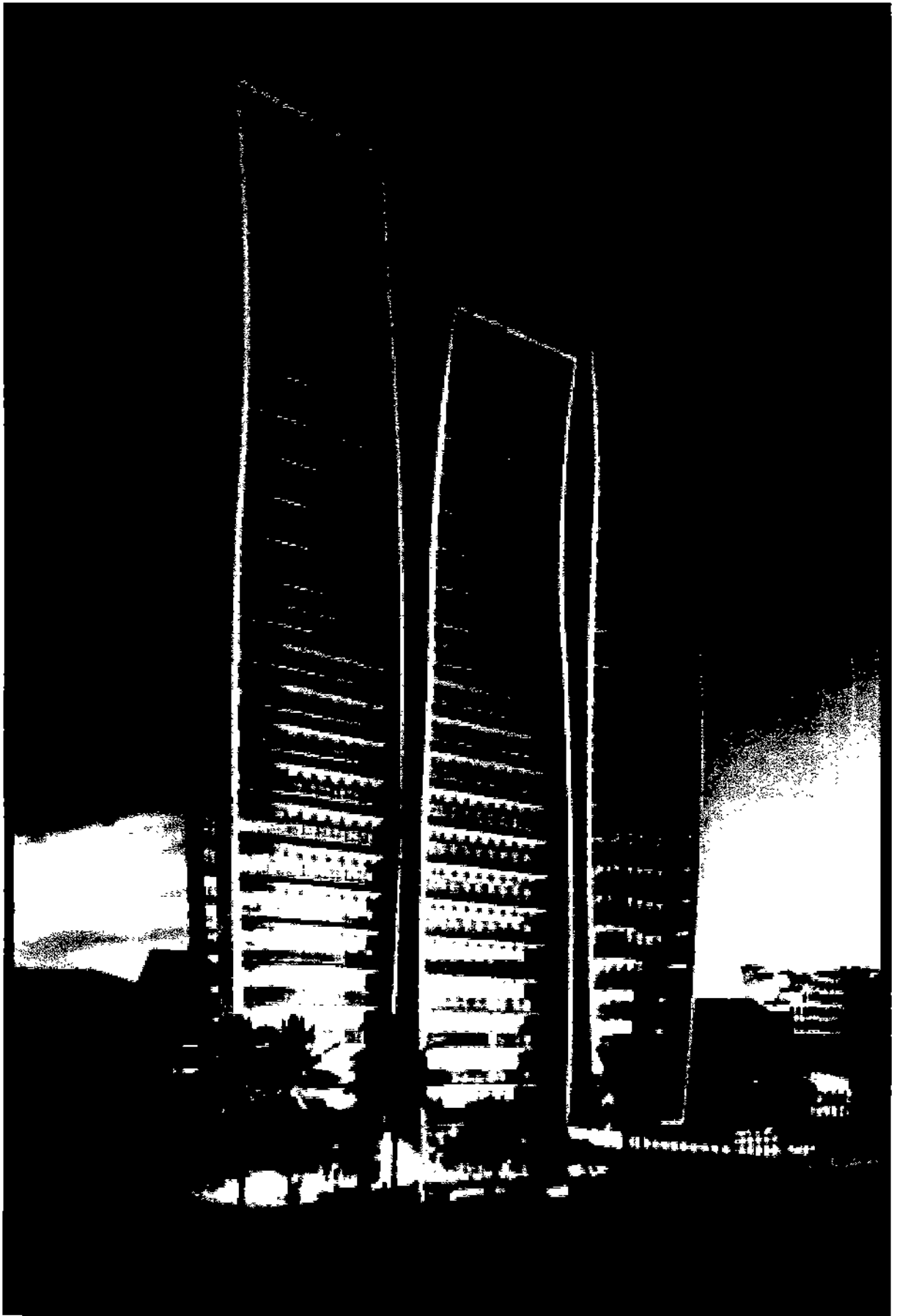
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View of Boutique Hotel
& High-Rise Residential Building



RESOLUTION NO. 07-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA RELATED TO THE INTENT TO OVERRULE THE ORANGE COUNTY AIRPORT LAND USE COMMISSION'S DETERMINATION THAT THE PROPOSED WYNDHAM BOUTIQUE HOTEL / HIGH-RISE RESIDENTIAL PROJECT (INCLUDING GENERAL PLAN AMENDMENT AND SPECIFIC PLAN AMENDMENT) ARE INCONSISTENT WITH THE 2002 JOHN WAYNE AIRPORT ENVIRONS LAND USE PLAN.

WHEREAS, the City Council of the City of Costa Mesa adopted the 2000 General Plan on January 22, 2002;

WHEREAS, the Planning Commission of the City of Costa Mesa adopted the North Costa Mesa Specific Plan by Resolution No. 94-67 in July 1994;

WHEREAS, by its very nature, the General Plan and North Costa Mesa Specific Plan need to be updated and refined to account for current and future community needs;

WHEREAS, the proposed Wyndham Boutique Hotel / High-Rise Residential project analyzed in Program EIR Number 1054 and proposed by Howard Zelefsky of Makar Properties involves the construction of an approximately 23-story/304' AMSL high-rise residential building at 3350 Avenue of the Arts, in conjunction with an interior renovation of the existing 6-story Wyndham Hotel;

WHEREAS, the proposed project involves the following discretionary approvals: (1) Certification of Final EIR No. 1054; (2) Overrule of the Airport Land Use Commission Determination; (3) General Plan Amendment GP-06-03 to amend the Land Use Element of the General Plan to incorporate provisions for high-rise residential development in the project area; (4) North Costa Mesa Specific Plan Amendment SP-07-01 to establish development standards and other related provisions in the NCMSP for the project; (5) Final Master Plan PA-06-75 for major renovation of the existing Wyndham Hotel site including: a reduction in hotel rooms from 238 to 200 rooms; construction of a 23-story high-rise residential building with 120 for-sale condominium units, a lounge/bar, and ancillary retail uses; and demolition of existing parking structure and construction of a new seven-level, 480-space parking structure; and (5) Vesting Tentative Tract Map No. 17172 for the subdivision of the property for condominium purposes.

WHEREAS, the proposed Wyndham Boutique Hotel project include the following building height limit for the master plan and overall Specific Plan areas as shown in Table 1:

Table 1 HEIGHT LIMIT		
Project Site	Master Plan Building Height Limit	Specific Plan Height Limits
<u>PROPOSED PROJECT:</u> WYNDHAM BOUTIQUE HOTEL/ HIGH-RISE RESIDENTIAL PROJECT 3350 Avenue of the Arts	304' AMSL	280' AGL

WHEREAS, California Public Utilities Code Section 21676(b) requires the City of Costa Mesa to refer the proposed project to the Orange County Airport Land Use Commission (ALUC) for consistency with the Airport Environs Land Use Plan;

WHEREAS, at a duly-noticed public hearing on September 20, 2007, the ALUC found the proposed project to be inconsistent with the AELUP on a 5-3 vote;

WHEREAS, pursuant to Public Utilities Code Sections 21670 and 21676, the City of Costa Mesa may, after a public hearing, propose to overrule the ALUC by a four-fifths vote of the City Council, if the City of Costa Mesa makes specific findings that the proposed project is consistent with the purposes of Section 21670;

WHEREAS, at a duly-noticed public hearing on October 2, 2007, the Costa Mesa City Council took action to notify the ALUC of the City's intent to overrule the ALUC's Determination of Inconsistency for the proposed project;

NOW, THEREFORE, the Costa Mesa City Council **DOES HEREBY RESOLVE** to notify the Orange County Airport Land Use Commission of the City's intent to overrule the ALUC Determination that the proposed Wyndham Boutique Hotel / High-Rise Residential project (inclusive of a General Plan Amendment and North Costa Mesa Specific Plan Amendment) are inconsistent with the 2002 John Wayne Airport Environs Land Use Plan.

BE IT FURTHER RESOLVED that the City Council **DOES HEREBY ADOPT** the required findings in support of the City's intent to overrule of the ALUC Determination, as shown in Exhibit "A", FINDINGS.

BE IT FURTHER RESOLVED that the City Council directs staff to forward a letter to the Airport Land Use Commission and Caltrans Department of Transportation, Division of Aeronautics indicating the City of Costa Mesa's intent to override the ALUC's Determination of Inconsistency with the Airport Environs Land Use Plan. The letter shall include the proposed findings in support of the City's intended action.

PASSED AND ADOPTED by the City Council of the City of Costa Mesa at a public hearing held on the 2nd day of October, 2007.

ALLAN MANSOOR
MAYOR OF THE CITY OF COSTA MESA

ATTEST:

CITY CLERK OF THE CITY OF COSTA MESA

STATE OF CALIFORNIA)

)SS

COUNTY OF ORANGE)

I, JULIE FOLCIK, City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certify that the above Council Resolution No. 07-___ as considered at a regular meeting of said City Council held on the ___ day of _____, 2007, and thereafter passed and adopted as a whole at the regular meeting of said City Council held on the ___ day of _____, 2007, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this ____ day of _____, 2007.

EXHIBIT "A"

FINDINGS

The Costa Mesa City Council makes the following findings as stated in Section 21670 and required by Section 21676 of the Public Utilities Code as follows:

- A. Section 2.1.3 of the John Wayne Airport Environs Land Use Plan (AELUP) indicates that the Airport Land Use Commission recognizes the Federal Aviation Administration (FAA) as the single "Authority" for analyzing project impact on airport or aeronautical operations, or navigational-aid siting, including interference with navigational-aids or published flight paths and procedures. The AELUP also indicates that the Commission considers the FAA as the "Authority" for reporting results of such studies and project analyses. The FAA No Hazard Determinations dated July 23, 2007 is summarized in described in Table A and attached as Exhibit 1.

Table A FAA NO HAZARD DETERMINATION	
Project Site	Building Height Limit
Wyndham Boutique Hotel / High-Rise Residential project 3350 Avenue of the Arts	304' AMSL 270' AGL

- B. It is in the public interest to (1) provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to (2) promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to (3) prevent the creation of new noise and safety problems.

(1) To provide for the orderly development of John Wayne Airport (JWA) and the area surrounding the airport, the ALUC adopted the 2002 Airport Environs Land Use Plan (AELUP) on December 19, 2002. AELUP Section 2.2.1 sets standards and criteria based on the continuing operation of John Wayne Airport as a commercial and general aviation airport. The AELUP standards guide development proposals to best provide for orderly development of the airport and the area surrounding the airport through implementation of the standards in Section 2.2.1 for CNEL CONTOURS, ACCIDENT POTENTIAL ZONES/RUNWAY PROTECTION ZONES AND BUILDING HEIGHT RESTRICTIONS.

The ALUC staff report prepared for the ALUC during its review of the proposed application on August 16 and September 20, 2007, indicated that there is a "basis for finding the proposed project [as conditionally consistent] with the JWA AELUP." The ALUC staff report indicated that ALUC staff has reviewed this project with respect to compliance with the JWA AELUP, including review of noise, height restrictions, imaginary surfaces, flight track information and environmental compliance. Based upon staff's review of the proposed project, including review of the FAA Determination of No Hazard and review of past Consistency actions by the

ALUC for projects in this area, there is a basis for finding the currently proposed project conditionally consistent with the Commission's JWA AELUP

C. The projects' compliance with Section 2.2.1 of the JWA AELUP is established as follows:

- *CNEL CONTOURS* – The proposed project is outside the AELUP's Noise Impact Zone No. 1 (65 dB CNEL) and No. 2 (60 dB CNEL) noise contours, however the City project approval requires that the applicant meet City noise standards, which are consistent with the sound attenuation level of 45 dB CNEL included in the AELUP Section 3.3.6.
- *ACCIDENT POTENTIAL ZONES/RUNWAY PROTECTION ZONES* – The proposed project is outside of John Wayne Airport (JWA) Runway Protection Zones as depicted in Appendix D of the AELUP; the ALUC has not adopted any Accident Potential Zones for this airport because none could be justified with the available data.
- *BUILDING HEIGHT RESTRICTIONS* – As evidenced by a Federal Aviation Administration (FAA) Determination of "No Hazard to Navigation" issued for the proposed project in July, 2007, the proposed project does not represent a hazard to air navigation at a maximum height of 304' AMSL at 3350 Avenue of the Arts.

D. Section 2.2.1 of the JWA AELUP also allows the ALUC to "consider utilization of criteria for protecting aircraft traffic patterns at the airport which may differ from those contained in FAR Part 77, should evidence of health, welfare, or air safety surface sufficient to justify such action." The ALUC "will utilize the results of an Aeronautical Study, conducted by the FAA pursuant to FAR Part 77.13, in order to determine if a structure will have an adverse effect on the airport or on aeronautical operations."

The Council acknowledges that the Commission may utilize criteria for protecting aircraft traffic patterns at individual airports which may differ from those contained in FAR Part 77, should evidence of health, welfare, or air safety surface sufficient to justify such an action. However, the Council considered the FAA No Hazard Determination that the proposed building would not present a hazard to air navigation. The City Council finds the ALUC's belief that the proposed projects would increase public exposure to safety hazards was not based on substantial evidence that was introduced, commented on, or identified in support of the incompatibility finding.

E. The City of Costa Mesa requires that all development proposals meet the City's noise standards of 45 dB CNEL for the interior of residential uses, which is consistent with the standards established to promote the overall goals and objectives of the California airport noise standards. A condition has been placed on the project to demonstrate compliance with the City's noise standards before the City will issue each building permit for the project. Through implementation of the City's noise standards, the project meets the AELUP standards for California airport noise standards.

F. The standards established in Section 2.2.1 of the AELUP were adopted to prevent the creation of new noise and safety problems. The proposed project complies with the standards established in Section 2.2.1 of the AELUP through compliance with the noise criteria for CNEL noise contours, and the proposed project is outside the 60 dB CNEL

noise contour and accident potential zones/runway protection zones. The FAA has completed its review of the proposed building which is penetrating the Part 77 horizontal imaginary surface by 98 feet. The FAA has determined the proposed building does not represent a hazard to air navigation.

- G. Section 2.2.1 of the AELUP also states that the ALUC has not adopted any Accident Potential Zones for this airport because none could be justified with the available data. By requiring project adherence to the established standards in the AELUP, the City has taken measures to assure risks to people and property on the ground, and to the occupants of aircraft, are held to a minimum.
- H. It is the purpose of Chapter 3.5 of the State Aeronautics Act to (1) protect public health, safety, and welfare by ensuring the orderly expansion of airports and the (2) adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.
- I. The Airport Environs Land Use Plan (AELUP) is based on the continuing operation of John Wayne Airport as a commercial and general aviation airport facility. The ALUC's authority to formulate land use plans is embodied in the John Wayne AELUP, which includes criteria in Section 2.2.1 to protect the public health, safety, and welfare by ensuring the orderly expansion of airports. The proposed project, including General Plan Amendment and North Costa Mesa Specific Plan Amendment, meet the criteria set forth in the AELUP Section 2.2.1 as the standards and criteria for development in the airport environs area. Thus, the proposed projects provide a development plan for property that will protect the public health, safety, and welfare and ensure the orderly expansion of the airport. Other existing buildings are present in the area which are taller than the proposed project (i.e. Center Tower at 320' AMSL and Plaza Tower at 319' AMSL). Thus, the criteria are met with these existing buildings and will continue to be met with the proposed building.
- J. The standards and criteria established in Section 2.2.1 of the AELUP are adopted by the ALUC to minimize the public's exposure to excessive noise and safety hazards. The proposed project is consistent with the standards and criteria established in Section 2.2.1 of the AELUP. By meeting the criteria in Section 2.2.1 of the AELUP including criteria for noise, runway protection zones and building height restrictions, the proposed development will minimize the public's exposure to excessive noise and safety hazards within areas around public airports through subjection of the projects to conditions identified by the ALUC. The conditions require sound attenuation of noise impacts to meet City and California airport minimum standards, obstruction lighting and marking consistent with the FAA Advisory Circular 70/7460-1, "Notice of Airport in vicinity" to future occupants, outdoor signage depicting the presence of operating aircraft in community areas of the project, and the requirement to obtain an encroachment permit for the construction activities.

Exhibit 1

FAA No Hazard Determination



Federal Aviation Administration
Air Traffic Airspace Branch, ASW-520
2601 Meacham Blvd.
Fort Worth, TX 76137-0520

Aeronautical Study No.
2007-AWP-393-OE

Issued Date: 07/23/2007

Jason Korengold
Makar Properties, LLC
4100 MacArthur Blvd. #200
Newport Beach, CA 92660

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Building Southwest Corner
Location:	Costa Mesa, CA
Latitude:	33-41-30.54 N NAD 83
Longitude:	117-52-50.71 W
Heights:	270 feet above ground level (AGL)
	304 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation facilities. Therefore, pursuant to the authority delegated to me, it is hereby determined that the structure would not be a hazard to air navigation provided the following condition(s) is(are) met:

As a condition to this Determination, the structure is marked and/or lighted in accordance with FAA Advisory circular 70/7460-1 K Change 2, Obstruction Marking and Lighting, red lights - Chapters 4,5(Red),&12.

It is required that the enclosed FAA Form 7460-2, Notice of Actual Construction or Alteration, be completed and returned to this office any time the project is abandoned or:

☐ At least 10 days prior to start of construction (7460-2, Part I)
☒ Within 5 days after the construction reaches its greatest height (7460-2, Part II)

See attachment for additional condition(s) or information.

The structure considered under this study lies in proximity to an airport and occupants may be subjected to noise from aircraft operating to and from the airport.

This determination expires on 01/23/2009 unless:

- (a) extended, revised or terminated by the issuing office.
- (b) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE POSTMARKED OR DELIVERED TO THIS OFFICE AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE.

This determination is subject to review if an interested party files a petition that is received by the FAA on or before August 22, 2007. In the event a petition for review is filed, it must contain a full statement of the basis upon which it is made and be submitted in triplicate to the Manager, Airspace and Rules Division - Room 423, Federal Aviation Administration, 800 Independence Ave., Washington, D.C. 20591.

This determination becomes final on September 01, 2007 unless a petition is timely filed. In which case, this determination will not become final pending disposition of the petition. Interested parties will be notified of the grant of any review. For any questions regarding your petition, please contact Office of Airspace and Rules via telephone -- 202-267-8783 - or facsimile 202-267-9328.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

This aeronautical study considered and analyzed the impact on existing and proposed arrival, departure, and en route procedures for aircraft operating under both visual flight rules and instrument flight rules; the impact on all existing and planned public-use airports, military airports and aeronautical facilities; and the cumulative impact resulting from the studied structure when combined with the impact of other existing or proposed structures. The study disclosed that the described structure would have no substantial adverse effect on air navigation.

An account of the study findings, aeronautical objections received by the FAA during the study (if any), and the basis for the FAA's decision in this matter can be found on the following page(s).

A copy of this determination will be forwarded to the Federal Communications Commission if the structure is subject to their licensing authority.

If we can be of further assistance, please contact Karen McDonald, at (310)725-6557. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2007-AWP-393-OE.

Signature Control No: 500466-100591239

Kevin P. Haggerty

Manager, Obstruction Evaluation Service

(DNH)

Attachment(s)

Additional Information

Map(s)

7460-2 Attached

Additional information for ASN 2007-AWP-393-OE

THE PROPOSAL IS FOR A HIGHRISE BUILDING LOCATED AT 3350 AVENUE OF THE ARTS, COSTA MESA, CALIFORNIA. THIS POINT OF THE BUILDING IS SITED 1.15 NAUTICAL MILES (NM) FROM THE JOHN-WAYNE ORANGE COUNTY (SNA) AIRPORT, THE CLOSEST PUBLIC-USE LANDING AREA. OTHER STRUCTURES OF SIMILAR HEIGHT HAVE BEEN STUDIED AND ISSUED AIRSPACE DETERMINATIONS IN THIS AREA.

THIS STRUCTURE POINT IS LOCATED 6,041 FEET FROM THE RUNWAY 19R PHYSICAL APPROACH END.

THIS STRUCTURE POINT HEIGHT IS IDENTIFIED AS AN OBSTRUCTION BY EXCEEDING THE STANDARDS OF FEDERAL AVIATION REGULATION (FAR) PART 77, SUBPART C, AS FOLLOWS:

77.23(a)(2), BY 48 FEET, A HEIGHT MORE THAN 200 FEET ABOVE THE SNA FIELD ELEVATION (56'AMSL) WITHIN 3 NM OF THE AIRPORT REFERENCE POINT.

77.25(a), BY 98 FEET, A HEIGHT EXCEEDING THE SNA HORIZONTAL SURFACE.

APPLICATION OF STANDARD VFR TRAFFIC PATTERN CRITERIA FINDS THAT ALTHOUGH THE SITE UNDERLIES THE VFR TRAFFIC PATTERN AIRSPACE FOR THE AIRPORT, THE STRUCTURE HEIGHT WILL HAVE NO GREATER CUMULATIVE IMPACT ON VFR TRAFFIC PATTERN OPERATIONS THAN PREVIOUSLY STUDIED AND DETERMINED STRUCTURES OF SIMILAR HEIGHT.

FAA EVALUATION HAS FOUND THERE WOULD BE NO SIGNIFICANT ADVERSE EFFECT UPON VISUAL FLIGHT RULES (VFR) OPERATIONS, OR UPON INSTRUMENT FLIGHT RULES (IFR) OPERATIONS, OR UPON THE OPERATION OF AN AIR NAVIGATION AID (NAVAID), IF THE STRUCTURE, AT THIS POINT, WERE BUILT TO THE MAXIMUM PROPOSED HEIGHT.

THE STRUCTURE WOULD HAVE NO ADVERSE EFFECT UPON THE CAPACITY OF THE AIRPORT OR ON ANY PLAN ON FILE.

THIS MAXIMUM HEIGHT SHALL INCLUDE ALL ROOF-MOUNTED APPURTENANCES, INCLUDING BUT NOT LIMITED TO ANTENNAS, ROOF-TOP EQUIPMENT, SIGNS, AND RED OBSTRUCTION LIGHTING.

UPON THE STRUCTURE REACHING ITS MAXIMUM HEIGHT, THE SPONSOR SHALL SUBMIT FAA FORM 7460-2 AS SUPPLEMENTAL INFORMATION WITH A 1A-ACCURACY AS-BUILT SURVEY ATTACHED. THE SUPPLEMENTAL INFORMATION WILL ALSO BE USED FOR AERONAUTICAL CHARTING.

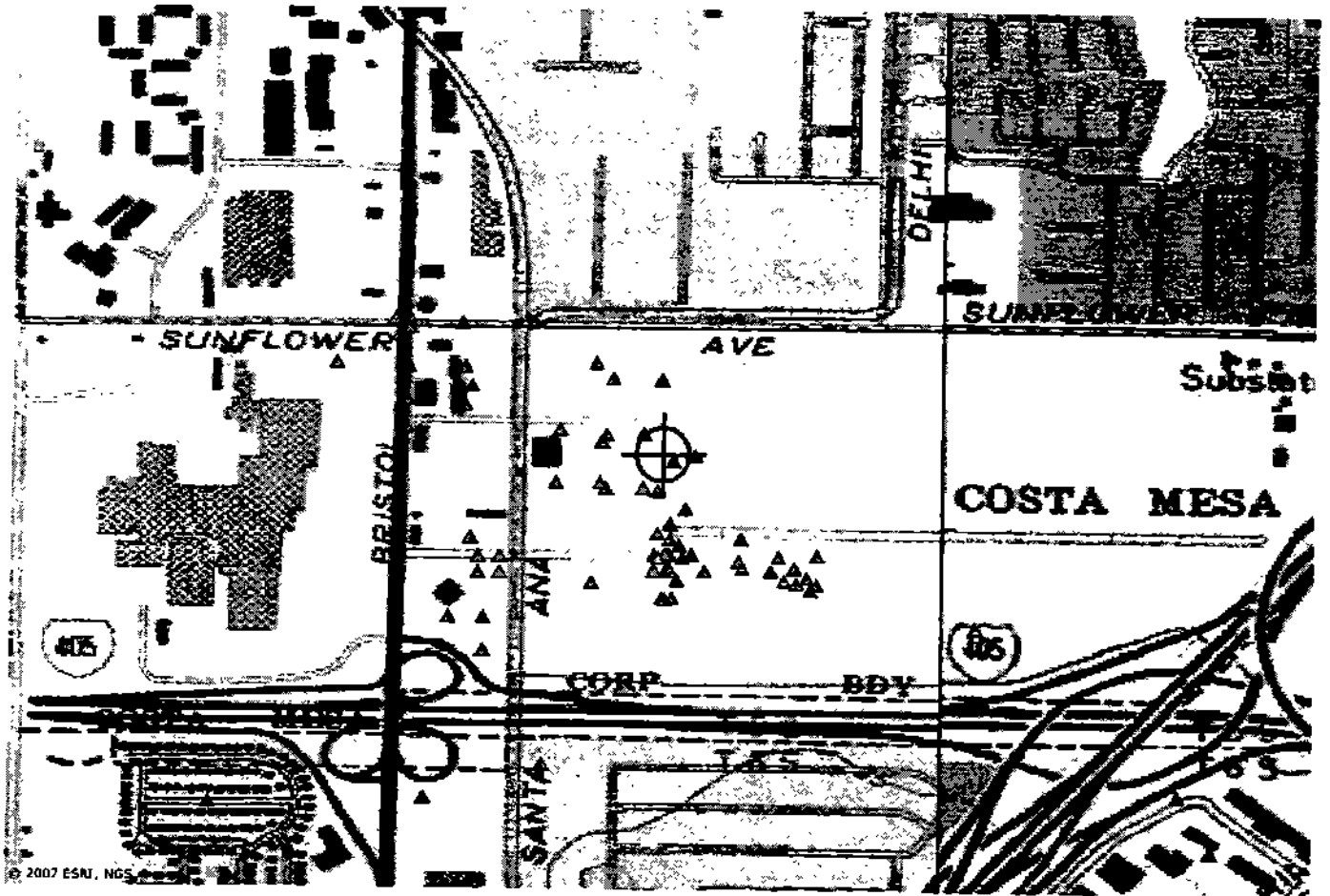
THIS PROPOSAL IS IN AN AREA OF PREVIOUSLY STUDIED STRUCTURES OF SIMILAR HEIGHT. THE AERONAUTICAL IMPACT IS KNOWN.

THIS PROPOSAL WAS CIRCULARIZED FOR PUBLIC COMMENT. NO COMMENTS OR OBJECTIONS WERE RECEIVED.

THE CUMULATIVE EFFECT OF THIS PROPOSED STRUCTURE, WHEN COMBINED WITH OTHER PROPOSED AND EXISTING STRUCTURES AND TERRAIN, IS NOT CONSIDERED TO BE SIGNIFICANT AND WOULD HAVE NO GREATER EFFECT UPON THE SAFE AND EFFICIENT UTILIZATION OF THE NAVIGABLE AIRSPACE.

THEREFORE, IT IS DETERMINED THAT THE PROPOSED STRUCTURE AT THIS POINT WOULD NOT HAVE A SUBSTANTIAL ADVERSE EFFECT ON THE SAFE AND EFFICIENT UTILIZATION OF THE NAVIGABLE AIRSPACE BY AIRCRAFT OR ON ANY AIR NAVIGATION FACILITY AND WOULD NOT BE A HAZARD TO AIR NAVIGATION.

THIS AIRSPACE DETERMINATION DOES NOT SUPERSEDE ANY CITY OR COUNTY HEIGHT RESTRICTION THAT MAY BE IMPOSED OR IN EFFECT OVERLYING THIS DEVELOPMENT SITE.





Federal Aviation Administration
Air Traffic Airspace Branch, ASW-520
2601 Meacham Blvd.
Fort Worth, TX 76137-0520

Aeronautical Study No.
2007-AWP-395-OE

Issued Date: 07/23/2007

Jason Korengold
Makar Properties, LLC
4100 MacArthur Blvd. #200
Newport Beach, CA 92660

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Building Northeast Corner
Location:	Costa Mesa, CA
Latitude:	33-41-31.92 N NAD 83
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If we can be of further assistance, please contact Karen McDonald, at (310)725-6557. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2007-AWP-395-OE.

Signature Control No: 500468-100591243

Kevin P. Haggerty

Manager, Obstruction Evaluation Service

(DNH)

Attachment(s)

Additional Information

Map(s)

7460-2 Attached



CITY OF COSTA MESA

CALIFORNIA 92626-1200

P.O. BOX 1200

FROM THE OFFICE OF THE CITY CLERK

**IF YOU ARE INTERESTED IN VIEWING THE REMAINDER
OF THE THIS DOCUMENT
PLEASE CONTACT THE CITY CLERK'S OFFICE
AT (714) 754-5221**